



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG-2022-0549]

Safety Zones; Technical and Conforming Amendments

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive technical and conforming amendments to a Code of Federal Regulations (CFR) part which will allow the Coast Guard to include safety zones for non-mineral energy resource facilities on the Outer Continental Shelf in that part. It reflects amendments to the Outer Continental Shelf Lands Act by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. This rule will have no substantive effect on the regulated public. It enables us to properly place newly authorized safety zones in the same CFR part where other existing Outer Continental Shelf safety zone regulations are located.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0549 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Alayna Ness, Coast Guard; telephone 202-372-3853, email Alayna.R.Ness@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NDAA	National Defense Authorization Act
OCS	Outer Continental Shelf
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

II. Regulatory History

We did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), the Coast Guard finds that this final rule is exempt from notice and public comment rulemaking requirements because these changes involve rules of agency procedure or practice. In addition, the Coast Guard finds that notice and comment procedures are unnecessary for this final rule under 5 U.S.C. 553(b)(B), as this rule consists of only technical and editorial corrections and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this final rule effective upon publication in the **Federal Register**.

III. Basis and Purpose

This final rule, which becomes effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], makes technical and conforming amendments to title 33, part 147, of the Code of Federal Regulations (CFR). These non-substantive changes are necessary to include safety zone regulations for non-mineral energy activities on the Outer Continental Shelf (OCS) in 33 CFR part 147. This rule does not create or change any substantive requirements.

This final rule is issued under the authority of 5 U.S.C. 552(a), 14 U.S.C. 102, and 43 U.S.C. 1333; DHS Delegation No. 00170.1(II)(90), Revision No. 01.3; and authorities listed at the end of this rule for the CFR part this rule amends.

IV. Discussion of the Rule

The Coast Guard is issuing technical and conforming amendments to the existing regulations in title 33, part 147, of the CFR. These technical amendments provide the public with accurate and current regulatory information as to where safety zones for certain OCS facilities will be located in the CFR, but do not change the effect of any Coast Guard regulations on the public. Our amendment to 33 CFR 147.10 is narrowly focused on allowing us to establish 33 CFR part 147 as the location for safety zones regulations for non-mineral energy resource OCS facilities.

On January 1, 2021, Congress enacted the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA), Pub. L. 116-283, 134 Stat. 3388. Section 9503 of the NDAA amended Section 4(a)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(1)) to specifically include non-mineral energy resources. The Coast Guard uses the affected statutory provisions as authority for issuing safety zone regulations around offshore facilities on the OCS. In § 147.10, this rule redesignates paragraphs (b) through (d) as paragraphs (c) through (e), makes a conforming amendment to an existing cross-reference in newly redesignated paragraph

(c), and adds a new paragraph (b). New paragraph (b) explains that, for purposes of establishing safety zones under part 147, “OCS facility” includes non-mineral energy resource permanent or temporary structures. The rest of part 147 is unchanged by this technical amendment.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A regulatory analysis follows.

This rule involves non-substantive technical amendments and internal agency practices and procedures; it will not impose any additional costs and will provide qualitative benefits. The final rule will simply amend our regulations to reflect existing statutory authority under the 2021 NDAA to allow the Coast Guard to establish safety zones for non-mineral development on the OCS and to help identify where these safety zone regulations will be located in the CFR. The rule will also add clarifying text in 33 CFR part 147 in support of this change.

The Coast Guard does not expect that there will be any additional costs conferred on the public or the Federal Government, because none of the technical and editorial changes included in this rule will change existing regulatory requirements, and no safety zones on the OCS will be directly established, removed, or otherwise modified by this rule. The qualitative benefits of the non-substantive technical amendments are increased clarity of regulations that will now reflect recent amendments to 43 U.S.C. 1333. Hence, this rule will establish that safety zone regulations for non-mineral energy resources OCS facilities will be located in 33 CFR part 147.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

A notice of proposed rulemaking does not precede this rule. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule will not call for a new collection of information under the Paperwork

Reduction Act of 1995, 44 U.S.C. 3501–3520, nor does it impact an existing collection.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically

significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under DHS Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This rule is categorically excluded under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature:

- (a) Those of a strictly administrative or procedural nature;
- (b) those that implement, without substantive change, statutory or regulatory requirements;
- (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; and
- (d) those that interpret or amend an existing regulation without changing its environmental effect.

Paragraph L54 pertains to regulations which are editorial or procedural. This final rule involves a non-substantive technical and conforming amendment to existing Coast Guard regulations.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 is revised to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C 1333; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Amend § 147.10 as follows:

- a. Redesignate paragraphs (b) through (d) as paragraphs (c) through (e);

- b. Add new paragraph (b); and

- c. In newly redesignated paragraph (c), remove the text “paragraph (c)” and add, in its place, the text “paragraph (d)”.

The addition reads as follows:

§ 147.10 Establishment of safety zones.

* * * * *

(b) For purposes of establishing safety zones under this part, OCS facility includes non-mineral energy resource permanent or temporary structures.

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Dated: January 4, 2023.

Michael Cunningham,
Chief, Office of Regulations and Administrative Law.

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